82-1157

Supreme Court, U.S.
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No.

IN THE SUPREME COURT
OF THE UNITED STATES

October Term, 1983

LAWRENCE A. MEACHUM, et al,
Petitioner,

V.

NORMAN LONGVAL,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether a defendant's subjective perception of possible vindictiveness is the proper standard by which to determine a Due Process violation in a habeas corpus proceeding brought by a state prisoner where the state court has found nothing inappropriate in either the judge's remarks or the sentence imposed?

PARTIES

Lawrence R. Meachum and Fred Butterworth were named as respondents below. Normal L. Longval was the petitioner in the Court below.

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PETITION FOR WRIT OF CERTIORARI

The petitioner prays that a Writ of Certiorari issue to review the judgment of the Court of Appeals for the First Circuit.

OPINIONS BELOW

The opinion of the court below on remand from the Supreme Court of the United States, Longval v. Meachum, No.

80-1503 (App. A) is not yet reported. The order of this court, vacating the earlier judgment of the Court of Appeals issued on June 28, 1982. Meachum v. Longval, No. 81-261. The earlier opinion of the Court of Appeals is reported at 651 F.2d. 818 (1st Cir. 1981). (App. B). The opinion of the Supreme Judicial Court, Commonwealth v. Longval is reported at 378 Mass. 246, 390 N.E.2d 1117 (1979). (App. C).

JURISDICTION

The decision of the court below was rendered on November 24, 1982. The mandate was stayed until January 17, 1983, pending the application to this Court for a writ of certiorari. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. §1254(1).

CONSTITUTIONAL PROVISION INVOKED

Fourteenth Amendment

Section 1. ... nor shall any State deprive any person of life, liberty or property, without due process of law ... .

STATEMENT OF THE CASE

This second petition for writ of certiorari challenges the decision of the Court of Appeals for the First Circuit on remand from the Supreme Court of the United States.

This matter commenced on September 8, 1975, when Norman Longval and two others were indicted for armed robbery, assault by means of a dangerous weapon, unlawfully carrying a sawed off shotgun, and using a motor vehicle without authority.

Prior to trial, one co-defendant (Ellard) pled guilty and was sentenced as follows: two years at a House of Correction for assault by means of a dangerous weapon, one year in a House of Correction for using a motor vehicle without authority to be served from and after the first sentence and three years probation on one armed robbery charge to run from and after the second sentence. The remaining indictments were filed.

Longval and the remaining co-defendant were tried before a jury. The co-defendant was acquitted. Longval was convicted on all indictments and was sentenced as follows: concurrent terms of thirty-two to forty years at Massachusetts Correctional Institution, Walpole on the armed robbery charges, concurrent terms of eight to ten years on the assault and gun carrying charges

to run from and after the sentences for armed robbery. The motion vehicle charge was filed.

Longval appealed his sentence to the Appellate Division of the Superior Court. His sentences were reduced as follows: concurrent terms of thirty to forty years on the armed robbery charges and lesser terms as to the other sentences, all to be served concurrently with the armed robbery sentence.

On his appeal pursuant to G.L. c. 278, §§33A-G, Longval assigned one error dealing with the disparity between his sentences and those given Ellard.

Subsequently Longval filed a petition for a writ of error in the Supreme Judicial Court attacking his sentences and referring to matters outside the record on appeal. A Single Justice of the Court ordered that the

record on appeal be expanded to include the transcript of co-defendant Ellard's plea and sentencing and to include a report of a Special Master of the substance of an unrecorded lobby conference between the sentencing judge and counsel. After hearing, the Special Master had found that in the unrecorded conference during the presentation of the Commonwealth's case, the trial judge said to Longval's counsel:

> "[T]he evidence in this case as it is coming in is very serious -- robbery of a drug store, taking (i.e. theft of) drugs, use of a shot gun. I am wondering if you and the Commonwealth have had any discussion regarding a plea (of guilty). I strongly suggest that you ask your client to consider a plea, because, if the jury returns a verdict of guilty, I might be disposed to impose a substantial prison

> sentence. You know that I am capable of doing that because you know of the sentences in a previous trial."

Report of Special Master and Commissioner, 3-4 (App. D). Subsequently the Supreme Judicial Court affirmed the judgments of conviction. Commonwealth v. Longval, 378 Mass. 246, 390 N.E.2d 1117 (1979).

Thereafter Longval filed, pro se, a petition for writ of habeas corpus in the United States District Court for the District of Massachusetts alleging that his state conviction and sentence were obtained in violation of the Sixth and Fourteenth Amendments of the United States Constitution. Counsel was appointed and, on May 7, 1980, after a hearing, the petition was dismissed. On May 20, 1980, the district court refused

to certify that there was probable cause to prosecute an appeal.[1/]

On June 19, 1981, the Court of Appeals reversed the district court and ordered

> "The writ of habeas corpus shall issue unless within sixty days the defendant is resentenced before a Massachusetts Superior Court Justice, other than the one who presided at his trial."

1/ In denying the application the Court noted the following:

> "I refuse to certify that there is probable cause to prosecute the appeal. At argument counsel for the plaintiff asserted that the basis for his claim was that a pretrial statement of the trial judge "chilled his right" to a jury trial. The petitioner however elected to proceed by jury trial and was found guilty by a jury. In my opinion this application and their present appeal are frivolous."

Longval v. Meachum, 651 F.2d 818 (1st Cir. 1981). (App. B).

The mandate of the court was stayed until August 10, 1981 pending the filing of a petition for writ of certiorari.

Petitioner filed a petition for writ of certiorari which was granted and the judgment of the Court of Appeals was vacated, and the case remanded for further consideration in light of United States v. Goodwin, 457 U.S. ___ (1982) (Slip. Op. No. 80-2195). Meachum v. Longval, No. 81-261 (June 28, 1982). After further submission of briefs and oral argument, the Court of Appeals again ordered that "[t]he writ of habeas corpus shall issue unless within sixty days the defendant is resentenced before a Massachusetts Superior Court Justice other than the one who presided at trial."

On petitioner's motion the mandate was stayed until January 17, 1983 pending the instant filing of a petition for writ of certiorari.

REASONS FOR GRANTING REVIEW

INTRODUCTION

The decision of the Court of Appeals arises not in the context of the court's exercise of its supervisory powers over actions of lower federal trial judges, but in the context of a state prisoner's habeas corpus petition. It is suggested that the federal court's jurisdiction over state criminal trials should be, and indeed is, limited to those instances in which fundamental error violating a specific constitutional guarantee has been committed in a state trial court and gone unreviewed under proper constitutional standards by the highest state court. Such is not the

instant case. This case therefore involves a substantial question involving the scope of permissible interference by a federal court in a state's ability to regulate its own criminal trials.

The second reason for granting certiorari is that the Court of Appeals for the First Circuit has misapplied the standard to be applied in evaluating a judicial response to a criminal defendant's exercise of a right to jury trial as enunciated by this Court in United States v. Goodwin, ___ U.S. ___, 102 S.Ct. 2485 (1982).

I. THE FIRST CIRCUIT COURT OF APPEALS HAS ABUSED ITS HABEAS CORPUS JURISDICTION IN CONFLICT WITH THIS COURT'S DECISIONS IN SUMNER V. MATA, 449 U.S. 539 (1981), SUMNER II, ___ U.S. ___, 102 S.Ct. 1303 (1982) AND DONNELLEY V. DeCHRISTOFORO, 416 U.S. 637 (1974).

In both Sumner and Sumner II, this court made clear that in a proceeding

pursuant to 28 U.S.C. §2254 a state court's findings of fact, made by either a trial or appellate court, are to be accorded a presumption of correctness, unless the federal court explains why it has not done so. In the instant case, the federal court has merely substituted its own view of the trial judge's statement. At a hearing in the state court, the Special Master found:

> "Nothing in the context of the conference as described to me in testimony led me to construe the judge's remarks as in any sense a threat, but merely as a statement to a young lawer of the judge's then general impression of the evidence as it had developed to that point."
>
> Report of the Special Master and Commissioner, 4.

The Supreme Judicial Court, in construing the remarks, found:

> "We do not read the words of the judge quoted supra as supporting an inference of such punishment or threat of punishment. His words directed the attention of defense counsel to sentences he had imposed in other unrelated cases; they commented on the serious nature of the offense as shown in the evidence at trial; and they advised the defendant, through his counsel, not to forego any advantage that might accrue to the defendant by means of plea bargaining and a resulting recommendation to the Court by the prosecution, as to the sentence.
>
> There was nothing inappropriate in these comments by the judge." Commonwealth v. Longval, 378 Mass. 246, 251-252 (1979) N.E.2d 1117 (1979).

However, it is only by outright rejection of the state court's findings that the federal court is able to elevate the issue to one of

constitutional dimension. In both decisions the Court of Appeals substitutes its characterization of the judge's remarks - a "plea or else" "attempt to coerce," (Longval, II at 3), for the state court's findings. The Court of Appeals has therefore violated the principles governing habeas corpus review enunciated in Sumner v. Mata, I & II, supra.

Moreover, the approach taken by the Court of Appeals is analogous to that disapproved by this Court in Donnelley v. DeChristoforo, 416 U.S. 637 (1974). In DeChristoforo the Court of Appeals had noted that its review was "the narrow one of due process, and not the broad exercise of supervisory power that [it] would possess in regard to [its] own trial court." DeChristoforo v. Donnelley, 473 F.2d 1236, 1238 (1973).

However, the Court of Appeals then proceeded to substitute its interpretation of a prosecutor's remarks for the interpretation given by the state court and finding fundamental error, granted the habeas petition. This court reversed, noting the fundamental principle that "not every trial error or infirmity which might call for application of supervisory powers correspondingly constitutes a 'failure to observe that fundamental fairness essential to the very concept of justice' Lisenba v. California, 314 U.S. 219, 236 (1941)" Donnelley v. DeChristoforo at 642. This Court found no fundamental error in the prosecutor's remarks.

In DeChristoforo, as in the instant case, the State has not denied the defendant the benefit of a specific

constitutional right, nor could the court's remarks be reasonably construed to have infected the trial itself rendering the conviction fundamentally unfair. It should be noted that the defendant never offered to plead guilty; he exercised his right to a jury trial and received a sentence for which the Supreme Judicial Court found "ample justification," Commonwealth v. Longval, 390 N.E.2d at 1121. The alleged impropriety, it is submitted, does not rise to a level of constitutional significance appropriate for habeas corpus review.

II. THE COURT OF APPEALS HAS FAILED TO PROPERLY APPLY UNITED STATES V. GOODWIN, ___ U.S. ___, 102 S.Ct. 2485 (1982).

In United States v. Goodwin, ___ U.S. ___, 102 S.Ct. 2485 (1982), this court held that a pretrial substitution of felony for misdemeanor charges after

a defendant claimed a jury trial did not give rise to a presumption of prosecutorial vindictiveness. The court distinguished between pretrial and posttrial charging decisions and explicitly limited the presumption of vindictiveness established by Blackledge v. Perry, 417 U.S. 21 (1974) and North Carolina v. Pearce, 395 U.S. 711 (1969) and to posttrial decisions.

In Goodwin, the court found that there was no evidence in [that] case that could give rise to a claim of actual vindictiveness ..." the court stated, "[t]he conviction in this case may be reversed only if a presumption of vindictiveness applicable in all cases - is warranted. 102 S.Ct. 2485, (1982). This court held that a presumption of vindictiveness was not warranted. The court refused to extend the scope of Pearce and Blackledge, asserting, "...

the institutional bias against retrial of a decided question that supported the decisions in Pearce and Blackledge simply has no counterpart in this case." (Footnote omitted). 102 S.Ct. at 2494.

However, although this court rejected the presumption of vindictiveness standard in Blackledge v. Perry and required proof of actual malice, the Court of Appeals, on remand, totally ignored the distinction drawn by this court. The Court of Appeals instead applied the Blackledge standard, stating "Whatever his actual state of mind, or purpose, we regard the judge's mid-trial interjections as susceptible of appearing from the defendant's perspective to be an attempt to coerce him to plead." The court rejected a rule requiring a prima facie showing of actual malice and ignored this court's

limitation on the presumption of vindictiveness to the precise situation presented in Blackledge. The decision below is in complete conflict with this Court's decision in Goodwin. See also, Moon v. Maryland, 398 U.S. 319, 321 (1970) (certiorari dismissed as unprovidently granted where petitioner did not allege that the judge was vindictive).

CONCLUSION

For the reasons stated above, the petition for writ of certiorari should be allowed.

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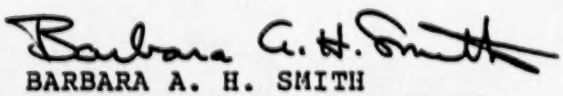

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